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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,621	10/30/2003	Charles Brewer	410-1-014	9892
20551	7590	11/15/2005		
THORPE NORTH & WESTERN, LLP. 8180 SOUTH 700 EAST, SUITE 200 SANDY, UT 84070			EXAMINER ALIMENTI, SUSAN C	
			ART UNIT 3644	PAPER NUMBER
DATE MAILED: 11/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/698,621	<b>Applicant(s)</b> BREWER ET AL.	
	<b>Examiner</b> Susan C. Alimenti	<b>Art Unit</b> 3644	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. The Affidavits filed on 09 September 2005 under 37 CFR 1.131 are sufficient to overcome the Wood reference (USPGPUB 2004/019724).

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 20, 22, 24, 28, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Haynes et al. (US 5,072,694).

Regarding claims 1 and 29, Haynes et al. (Haynes hereafter) discloses a pet house comprising a lower frame 12 with fabric 40 attached thereto forming a floor, and a substantially rigid upper frame 14 cooperable with the lower frame to form an enclosure. Frame 14 is removable from both the floor portion 12, via hook members 72, 74, 76, and 88 (Haynes, col.5, ln.66, to col.6, ln.2), and cover 36 via receiving sleeves 96. The upper frame further comprises an opening 38, allowing the animal to enter and exit the enclosure.

Regarding claim 2, lower frame 12, forming a floor, sits spaced above the supporting floor.

Regarding claim 3, fabric 40 is considered to be air permeable.

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Regarding claim 20, the means for staking the housing to a supporting surface is defined as leg 18 readily available to be staked to a ground surface, e.g. a U-shaped stake overlapping leg 18 and engaging the ground.

Regarding claim 22, cover 36 is considered to be made of a fabric material.

Regarding claims 24 and 30, hook members are readable on the "fastener portions" of claim 24, and are mated with receiving holes in 70 in cover 36, securing the cover to the pet house.

Regarding claim 28, when upper frame 14 is removed from floor portion 12, and open pet cot is created.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-6, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes.

Haynes discloses the claimed invention except the material of the fabric is not expressly disclosed. Haynes mentions that a preferable material for the top cover is a layered quilted construction that provides insulation (col.4, lns.40-44) and the fabric for the base could be a cotton duck fabric (col.4, lns.55-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a mesh, polyester, or nylon material since these

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are known materials in the art and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 6, the lower frame is supported on legs 32, 34, 18.

6. Claims 7-15, 18-19, 21 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes as applied above, and further in view of Ventura (US 6,098,218).

Regarding claims 7-12 and 18-19, Haynes discloses the claimed invention except the frame structure is different. It is widely known that tent structures, whether used for humans or pets, are available in a wide variety of frame structures. Ventura discloses a housing in the same field of invention, having a base frame structure comprising four removable legs 14 coupled to frame members 50, 51, 40 by connectors 52, 42 which are disposed at each of the four corners of the base frame. Ventura's structure allows more versatility than Haynes in collapsing the device, because all the components can be separated and compacted into a smaller traveling/storage size. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' frame structure with Ventura's, by providing the legs 32, 34, 18 as separable pieces, in order to allow the user to completely deconstruct the frame accommodating a smaller travel or storage space.

Claim 13 is rejected similarly to claims 24 and 30.

Regarding claims 14-15 and 25-26, Haynes as modified discloses the claimed invention except an additional ventilation area and flap covering the entrance is not positively disclosed. Ventura's device offers both a ventilation window 12 and a flap 12 covering the entrance to the

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housing. These two elements provide enhanced comfort and privacy to the user and are well known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' housing by adding a ventilation window in order to provide air flow in hot climates and a flap covering the entrance in order to prevent the animal from being disturbed or scared from external influences.

Regarding claim 21, Haynes discloses the claimed invention except it is not expressly disclosed how the housing would be coupled to the floor. Ventura discloses a well known staking system utilizing a tie line 30 that can be coupled to various holes 48, 16 in a tab portion extending from the main frame. This system provides stability to the housing while in use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' device by adding a tab portion and staking hole there through in order to provide stability to the housing. It is further recognized that the placement of such a hole in this case would obviously be anywhere that could provide a steadying force to the system.

7. Claims 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes in view of Ventura as applied to claim 14 above, and further in view of Widrich (US 6,338,314).

Haynes, as modified, discloses the claimed invention except there is not a pad added to the base fabric 40. Widrich discloses a pet housing wherein a frame 40 is fitted with a fabric and a pillow top is supplied adding comfort and insulation for the pet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' device by adding a pillow top to the base fabric 40 in order to provide additional comfort and insulation for the pet.

Regarding claim 17, the pillow top is considered to be removable insulating material.

8. Claims 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes as applied to claim 1 above, and further in view of Widrich.

Haynes, as modified, discloses the claimed invention except there is not a pad added to the base fabric 40. Widrich discloses a pet housing wherein a frame 40 is fitted with a fabric and a pillow top is supplied adding comfort and insulation for the pet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' device by adding a pillow top to the base fabric 40 in order to provide additional comfort and insulation for the pet.

#### ***Response to Arguments***

9. Applicant's arguments filed 19 January 2005 have been fully considered but they are not persuasive. The examiner first notes that the rejection over USPN 5,072,694 to Haynes et al., as set forth originally in the Office Action mailed 13 September 2004 was replaced in the Office Action mailed 27 April 2005, without prejudice, in view of newly discovered PGPUB 2004/0194724 to Wood. In accordance with the Rule 131 Affidavit submitted 31 August 2005, the Wood et al. reference has been withdrawn from the rejection, and the Haynes reference has been reapplied to claims 1-27, and applied to new claims 28 and 29. Accordingly a response to the aforementioned arguments (1/19/05) follows:

Applicant first argued that Haynes' upper frame is not "substantially rigid," nor is the cover removable from the upper frame. The examiner respectfully, but strongly disagrees. First regarding the terminology "substantially rigid," it is maintained that Haynes' upper frame is in fact rigid despite the fact that it may be flexible in order to fit into sleeves 96 of the upper cover,

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the frame must be rigid to hold it in such a form. As taught by Haynes, members 60 and 61 comprising the upper frame 14, are made "with sufficient resilience and rigidity to provide structural support and rigidity for cover 36." Regarding the second aforementioned point the cover 36 is removable, via sliding engagement with sleeves 96 (Haynes, Figure 2).

In response to the argument regarding the fastener connections recited in claims 13 and 24, the above rejection has been modified to more appropriately read the broad nature of said claims, which do not recite a specific type of fastener, i.e. hook and loop. Further, it is noted that Haynes hooks 72, 74, 76, and 88 are attached to the supporting floor 40, since the hooks are essentially part of the frame 12 and floor 40 is attached to the frame 12.

In response to Applicant's arguments that it would not be obvious to modify Haynes' frame to be deconstructable in several parts because it would be impossible to provide a proper spring support as taught by Haynes, the examiner respectfully disagrees. The present invention, as claimed, does not directly conflict with Haynes' spring support. The examiner maintains that Haynes' device may be made in various pieces, as described above, and yet still provide the spring support that is essential to proper working of said device. For example, the pieces that provide the necessary angular/pivot support could be may be as individual connector pieces, while still allowing for Haynes' device to be taken apart and thus become collapsible, and advantageously portable.

In response to applicant's argument that Ventura is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977



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F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, while Ventura's tent is intended for humans they still have the same essential living needs as other mammals or pets, i.e. to breath fresh air and receive proper ventilation, for example in hot weather.

In response to applicant's arguments regarding claim 21, the rejection is based upon the wording of said claim. Applicant argues that the present invention's staking method is different than that taught by Ventura, however the claim reads "wherein the means for staking . . . is a tab extending from the at least one leg with a hole therein through which a stake can be positioned." The examiner maintains that Ventura discloses such a structure, as explained in the above rejection.

For these reasons, and the ones listed in the above rejections, the examiner maintains the rejections of claims 1-27.

### ***Conclusion***

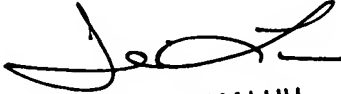
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA



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